

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

L.P.A. No.115 of 1997
Date of decision : 11.7.2007

Hindustan Machine Tools Ltd.

....Appellant through
Mr.R.K.Chhibbar,
Senior Advocate,
assisted by Mr.Adarsh
Gupta, Advocate

Versus

Lajwanti and others

... Respondents through
none.

CORAM : HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

....

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

...

Vijender Jain, Chief Justice (Oral)

This appeal has been preferred against the judgment of the learned Single Judge holding that the services of the workman will be deemed to have been terminated on the day when the action of the management was upheld by the Labour Court.

The learned Single Judge while concluding as above relied upon **Desh Raj Gupta v. Industrial Tribunal IV U.P.Lucknow and another** AIR 1990 S.C. 2174 and **Gujarat Steel Tubes Ltd. etc. V. Gujarat Steel Tubes Mazdoor Sabha and others**, AIR 1980 S.C. 1896.

Aggrieved by the said judgment, this appeal was preferred by the management, inter-alia, praying that the finding of

the learned Single Judge was contrary to the Constitutional Bench in **P.H.Kalyani v. M/s Air France** AIR 1963 S.C. 1756 and **D.C.Roy v. Presiding Officer, Labour Court and others** AIR 1976 S.C. 1760 and to the judgments of the Punjab and Haryana High Court which were rendered prior to the impugned judgment.

The learned Single Judge has awarded back wages from the date of dismissal i.e. acceptance of the resignation of the workman from 27.3.1970 till the Labour Court upheld the dismissal on 8.4.1992 and it is this grant of back wages to the workman which has been assailed before us in this appeal by the management.

The main thrust of the argument of the learned counsel for the appellant is that the date of dismissal which has been observed by the learned Single Judge could not relate back to the date of the order passed by the management and termination or acceptance of resignation was contrary to the dictum laid down by the Constitutional Bench of the Supreme Court as well as other authorities passed by the Supreme Court in this regard including a recent one in **Punjab Diary Development Corporation Limited & Anr. etc. v. Kala Singh etc.** JT 1997(5) S.C. 604 which has also considered **Desh Raj Gupta's case (supra)** and **P.H.Kalyani's case (supra)** and in **Punjab Diary Development Corporation Limited & Anr. etc.** the Supreme Court specifically overruled **Desh Raj Gupta's** judgment.

When the appeal was filed on 31.3.1997, notice of motion was issued and the impugned order was stayed. Thereafter the respondents did not appear in the appeal. A statement was made on

22.9.2006 that a fresh application will be moved by the appellant for substituted service, as it was not possible for the appellant to serve the respondents in ordinary manner. Thereafter the Court directed the publication of notice in the newspaper which has since been made in 'The Tribune' on 12.3.2007 but despite that nobody has put in appearance on behalf of the respondents.

We have heard the submissions of the learned counsel for the appellant.

The finding of the learned Single Judge that the services of the workman will be deemed to have been terminated on the day when the action of the management was upheld by the Labour Court and the date of dismissal cannot relate back to the date of the illegal order and the order of back wages to the workman from 27.3.1970 till the date of impugned award i.e. 8.4.1992 cannot be sustained in view of the judgment of the Constitutional Bench in **P.H.Kalyani's case** (Paragraph 8) as well as in view of what has been held in **Punjab Diary Development Corporation's case** (Paragraph 2).

The appeal is accordingly allowed and the judgment of the learned Single Judge is set aside.

(VIJENDER JAIN)
CHIEF JUSTICE

11.7.2007

(MAHESH GROVER)
JUDGE

dss